

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**MILE SQUARE TRANSPORTATION, INC.,¹
Employer**

- and -

Case No. 2-RC-23202

**INTERNATIONAL BROTHERHOOD OF TRADE UNIONS,
LOCAL 713,
Petitioner**

- and -

**LOCAL 100, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
Intervenor**

- and -

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 456,
Intervenor**

DECISION AND DIRECTION OF ELECTION

Mile Square Transportation, Inc., (“the Employer”) provides bus services in four school districts; namely, Yonkers, New Rochelle, Mount Vernon and Peekskill, NY. The International Brotherhood of Trade Union, Local 713 (“Petitioner”) filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the bus drivers and matrons employed in a single facility located at 215 South 11th Avenue, Mount Vernon, New York. Petitioner claims that single-plant unit is presumptively appropriate. In contrast, Local 100, Transport Workers Union of America, AFL-CIO, (“Intervenor Local 100”) claims that a multilocation unit comprised of all the facilities in lower Westchester county - Yonkers, New Rochelle and Mount Vernon - has been covered by collective-bargaining agreements between the Employer and Intervenor Local 100 since 1999. Accordingly, the employees working at the newly acquired facility at issue in the instant case should be merged into the larger unit that it already represents. Finally, the International Brotherhood of Teamsters, Local 456, (“Intervenor Local 456”), in agreement with the Employer, argues that the petitioned-for unit is appropriate as a separate facility. In that regard, Intervenor Local 456 notes that it currently represents the employees working at the Peekskill location and contends that

¹ At the outset of the hearing, the names of the parties were corrected.

another separate unit, albeit one that is situated geographically closer to the larger multi-depot lower Westchester unit, is nonetheless an appropriate unit.²

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Based upon the entire record in this matter³ and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that the Employer, a New York corporation, with a principal place of business located at 25 and 41 Torres Place, Yonkers, NY, is engaged in the transportation business of providing bus services. Annually, in the course and conduct of its business operations, the Employer derives gross revenues in excess of \$250,000 and purchases and receives at its New York facilities, goods and materials in excess of \$5,000 directly from firms located outside the State of New York.

Accordingly, based upon the stipulation of the parties, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Petitioner, the International Brotherhood of Trade Union, Local 713, is a labor organization within the meaning of Section 2(5) of the Act.

The parties stipulated and I find that Intervenor Local 100, Transport Workers Union of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

The parties stipulated and I find that Intervenor International Brotherhood of Teamsters, Local 456, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.⁴

5. Petitioner seeks to represent the bus drivers and matrons working at the facility located at 215 South 11th Avenue, Mount Vernon, New York ("South 11th Avenue"). As evidenced at the hearing and in the briefs, the parties disagree on the scope of the appropriate

² Intervenor Local 456 is a participating intervenor on the basis of less than 10% showing of interest. Intervenor Local 456 has not claimed that it is intervening on the basis of its contract or that the petitioned-for unit should include the Peekskill employees.

³ The briefs filed by the parties have been duly considered.

⁴ Intervenor Local 100 argued alternatively that lawful recognition bars the instant petition for a reasonable period of time; that issue is discussed more fully below in the analysis section.

unit.⁵ Petitioner and Intervenor Local 456 argue that the employees working at the South 11th Avenue depot, which comprises a unit of about 80 employees, constitute a presumptively appropriate single-facility unit. They argue that the employees in the petitioned-for unit do not share a community of interest with the other employees working in the nearby school districts. In that regard, Petitioner claims that the bus routes are unique and, therefore, employee interchange between the depots is minimal. Further, Petitioner argues that each facility is separately supervised by its own dispatcher who oversees the daily operations. Finally, Intervenor Local 456 notes that the Peekskill location is separately represented and while the petitioned-for unit is situated in lower Westchester, geographic grouping alone is insufficient as a basis for finding the larger unit appropriate.

To the contrary, Intervenor Local 100 argues that its expired collective-bargaining agreement with the Employer covers all of the facilities in lower Westchester and defines the unit by classification: “[t]his agreement shall apply to all bus and van drivers, monitors, mechanics, cleaners and maintenance workers.” In Yonkers, the employee complement totals about 370 employees in the above-mentioned unit classifications. In Mount Vernon, the expired contract covers about fifty employees working at a depot located at the 61 Hartford Avenue. Lastly, in New Rochelle, a total of approximately 110 unit employees work at two depots. Accordingly, Intervenor Local 100 contends that the petitioned-for unit of about seventy employees should accrete into the larger unit of 530 employees based on an eight-year bargaining history, the close geographic proximity of the depots, the degree of operational integration as evidenced by employee interchange, the similarities of skills and working conditions, and the common supervision and control exercised by the sole owner of this corporation. In the alternative, Intervenor Local 100 argues that the petition should be dismissed because the Employer has extended voluntary recognition to the petitioned-for unit which bars an election.

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I find that Intervenor Local 100 has rebutted the single-facility presumption and the appropriate unit is comprised of all nine depots throughout lower Westchester County. To provide a context for my discussion, I will first provide an overview of the Employer’s operations. Then, I will present the facts and reasoning that supports my conclusions on this issue.

I. RELEVANT FACTUAL BACKGROUND

A. The Employer’s Operations

Harry Rodriguez, the owner and president of the Employer, was the sole witness at the hearing. Ricardo Roda is his “right hand man” and officially, the corporate secretary. Safety director, Damon Runyon, also works out of the main office in Yonkers. These managers

⁵ Intervenor Local 100 stated that the lower Westchester multilocation unit, including all of the classifications listed in the collective-bargaining agreement is the appropriate unit. Both Petitioner and Intervenor Local 456 do not take a position regarding the inclusion of the mechanics, the bus cleaners and maintenance workers, and would proceed to an election in a unit which included these classifications.

organize the drivers' work from the central office on a daily basis. In addition, the Employer's accounting functions and all payroll reports are generated centrally from this location.

Rodriguez hires, disciplines and discharges employees. He also conducts training sessions/refresher courses in association with representatives from the Department of Transportation. The dispatchers work at the various depots and report to Roda and Rodriguez.⁶

The Employer's ten depots vary in size and employee compliment. In Yonkers, the largest facility is located at 56 Worth Street with about 100 unit employees reporting to work. The Employer has the following additional Yonkers' depots: 41 Torres Place with about 90 unit employees; 80 Lake Street with about 85 unit employees; Ashburton Avenue with about 60 unit employees; and 25 Torres Place with about 35 unit employees. Accordingly, the combined Yonkers operation consists of about 370 unit employees.

In Mount Vernon, about 50 unit employees report to a depot located at 61 Hartford Street. The depot in issue in the instant case, South 11th Avenue, has about 70 workers.

In New Rochelle, about 80 unit employees work out of a depot located at 525 5th Avenue and about 30 unit employees work at 21 2nd Street. Accordingly, the combined New Rochelle operations consists of about 110 unit employees.

Finally, the Employer runs a depot in Peekskill (which is about forty-five minutes north of the lower Westchester facilities detailed above) with about 90 employees.

In addition to bus drivers and monitors, the mechanics work at three of the depots and primarily service the vehicles in that district. The record did not disclose the number of total mechanics, but the Yonkers school district requires about 230 vehicles and the New Rochelle system uses about 160-170 vehicles. The Mount Vernon contracts are serviced with about 40 new buses. Finally, the record does not disclose the number of cleaners and maintenance workers at each location.

B. The Past Bargaining History

In 1989, Rodriguez started the business with one depot located at 25 Torres Place in Yonkers, NY. In 1992, the Employer was awarded a large contract for the New Rochelle school district which has continued to grow over time. In about 1999, Rodriguez voluntarily recognized Intervenor Local 100 and entered into a collective-bargaining agreement which was effective by its terms from March 1, 1999, to June 30, 2002. The recognition clause in the contract provides that all bus and van drivers, monitors, mechanics, cleaners and maintenance workers are included in the unit. In July 2002, the parties entered into a Memorandum of Agreement ("MOA") which was effective by its terms from July 1, 2002, to June 30, 2006. During the period from 1999 through 2006, the Employer's business continued to expand and the terms and conditions of the MOA were extended to all new employees who fell within the classifications specified in the contract, with one exception.

⁶ None of the parties is seeking the inclusion of the dispatchers in the unit. The record is unclear with respect to the authority exercised by dispatchers and it further appears that authority to operate the Employer's business is vested in Rodriguez, Roda and Runyon.

In 2000, the Employer successfully bid on a contract for bus services in Peekskill which is located in northern Westchester, about forty-five minutes away from the Yonkers' main office. At the Peekskill facility, the predecessor employer had a collective-bargaining agreement with Intervenor Local 456. When the Employer replaced the bankrupt predecessor, it hired a majority complement of the incumbent employees and adopted the collective-bargaining agreement in effect at that time with Intervenor Local 456.⁷ To date, the Employer continues to recognize Intervenor Local 456 as the exclusive collective-bargaining representative of those employees.

Meanwhile, the Employer continued to expand its lower Westchester business. In May 2006, it extended its New Rochelle operations to encompass seventy new routes, which it began servicing in September. In December 2006, the Employer successfully won the bid for forty new routes in Mount Vernon, which it commenced operating in January 2007.

As previously mentioned, the MOA between the Employer and Intervenor Local 100 expired at the end of June 2006. At the negotiations for a successor agreement, the parties agreed that the contract would cover all new routes and new employees that the Employer had recently acquired in accordance with the parties' past practice. In that regard, Rodriguez conducted a meeting in December 2006 at the South 11th Avenue depot and informed the employees that he was negotiating a contract with Intervenor Local 100 which would cover these workers, too. As Rodriguez distributed jackets for the employees to wear on duty, he explained that he could not be specific regarding wages and benefits because negotiations with Intervenor Local 100 were still in progress; however, it was clear that the employees' wages would increase from the rates offered by the predecessor company.

Sometime after January 2007, the Employer and Intervenor Local 100 finalized a tentative successor collective-bargaining agreement, but in June 2007, the unit voted not to ratify the contract. The instant petition was filed on May 31, 2007.

C. Employee Interchange

Rodriguez testified that when the Employer began operating the South 11th Avenue depot, he temporarily reassigned employees from nearby facilities to assist with the start up just to ensure a smooth transition. More commonly, employee interchange occurs during spring sports season because additional drivers and buses are required to accommodate teams' schedules. The depots help each other juggle the sports schedules. As an example, the New Rochelle system needed eighteen buses every day for three days. The drivers assigned to Mount Vernon runs were temporarily reassigned to assist with this heavy demand. The athletic programs can require an additional thirty-five to forty charters per day. While it is true that the drivers are most familiar with their assigned route, the Mount Vernon drivers are reassigned, on average, once or twice a week due to shortages in the other school districts. Rodriguez explained that one of the reasons that the Employer bid on the contract for the South 11th Avenue depot was because it was right next door to the New Rochelle and Yonkers operations. Further, Rodriguez claimed that the Employer uses the new Mount Vernon buses to meet the

⁷ Intervenor Local 456 did not offer into evidence a copy of the relevant collective-bargaining agreements or memorandum of agreement or extension agreement with the Employer.

increased demand for summer camp transportation services. The record also reflected the permanent transfer of one driver from the Mount Vernon facility to a Yonkers depot.

With respect to the mechanics, the record demonstrates that they work at three locations where the buses used in lower Westchester are serviced and inspected. The largest depot is 56 Worth Street in Yonkers; the second largest is South 11th Avenue; and, the third is located at 21 2nd Street in New Rochelle. Generally, specific buses are “dedicated” to a specific location to facilitate the paperwork required by DOT. The South 11th Avenue facility has the largest repair garage and therefore, the vehicles from other districts are sometimes repaired at this facility.⁸ The record did not disclose whether the maintenance work for the Peekskill buses was performed down county.

D. Functional Integration

All of the terms and conditions of employment for the unit employees at the various locations are the same. Rodriguez clarified that the wage rates are the same at all of the depots but, the parties negotiated a lower minimum guarantee of hours at the new Mount Vernon facility. In that regard, the parties agreed that for the first year of the contract, the guarantee was 41 hours and by the second year, the guarantee would be 42 hours. Accordingly, the minimum guarantee of hours would be equalized so that all of the employees enjoy the benefit.⁹

Regarding contract administration, the unit members elect two chairpersons who handle employee complaints for all of the depots covered by the contract with Intervenor Local 100. Grievances regarding pay disputes are generally handled between the chairperson and the dispatcher at each depot. In that regard, while the dispatchers are charged with tracking time and attendance, most of the employees work less than the guaranteed minimum. Occasionally, drivers exceed the guaranteed minimum and a pay discrepancy can arise. Most of these grievances are resolved at the first step with the dispatchers, however, where the problem is not settled, the chairperson brings the matter to the attention of managers Runyon, Roda or Rodriguez.

With respect to grievances regarding employee misconduct, the Union chairperson attempts to resolve the issue with either Runyon or Roda at the first level. Where the grievance progresses to the next level, Rodriguez participates directly with a Union representative. As an example, the Mount Vernon school district complained about one of the drivers, Mr. Garfield. After progressive discipline, Rodriguez decided to terminate Garfield. As a result of the Union staff representative Gil Bobe’s intervention, Rodriguez agreed to transfer the driver to a route in Yonkers, in lieu of discharge.

One master seniority list encompasses the employees at Yonkers, Mount Vernon and New Rochelle. For purposes of lay-off and picking runs, the employees bid based on seniority on the master list.

E. Geographic Proximity

⁸ The record does not disclose whether the maintenance work for the Peekskill buses was performed down county.

⁹ The record suggests that the Employer and Intervenor Local 100 negotiated “a break” on the hours guarantee during the bidding process and therefore, prior to hiring any employees for this depot.

All of the facilities covered by the expired MOA are within a few miles radius geographically.

II. ANALYSIS

Section 9(b) of the Act states that the “Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.”

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather, the Act requires only that the unit be appropriate. The Board has held that in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994).

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood*, 323 NLRB 665,666 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). The Board, in *Trane, an Operating Unit of American Standard Companies*, 339 NLRB 866 (2003), noted that while the party opposing the single-facility unit has a heavy burden, the Board has never held that to rebut the presumption a party must proffer overwhelming evidence of the complete submersion of the interests of the employees at the single location,¹⁰ nor is it necessary to show that the separate interests of the employees sought have been obliterated.

To determine whether the presumption has been rebutted, the Board considers such factors as past bargaining history; the extent of interchange among employees; the extent of functional integration of operations; the centralization of management and supervision, particularly in regard to labor relations; and the physical and geographical location in relation to other facilities. *Waste Management of Washington, Inc.*, 331 NLRB 309 (2000); *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Novato Disposal Services*, 328 NLRB 820 (1999); *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993); *Esco Corp.*, 298 NLRB 837 (1990); *Dayton Transport Corp.*, 270 NLRB 1114 (1984). Analyzing the facts here in light of the applicable criteria, I find that Intervenor Local 100 has rebutted the single-location presumption.

Although each depot has a dispatcher, the record demonstrates highly centralized control over labor relations and the daily operations. All bus routes and driver assignments are coordinated through the main office. Hiring, discipline and termination decisions are made by Rodriguez at headquarters. All wages and benefits established in the collective-bargaining agreement are uniformly applied to all of the depots in Yonkers, New Rochelle and Mount Vernon. All accounting, payroll and personnel functions are carried out at the main office.

¹⁰ While there is one stand alone unit operated by the Employer in Peekskill, this unit was the result of the Employer becoming a successor employer bound to bargain with Intervenor Local 456. *Dean Transportation, Inc.*, 350 NLRB No. 4 (2007).

Accordingly, the record does not reveal that the dispatchers exercise the high degree of autonomy over the daily operations of the depots to find that the petitioned-for unit should be treated separately.

With respect to the equipment, skills and type of work performed, the record is clear that all of the drivers operate school buses and vans and the monitors assist the students with boarding and exiting the bus. The buses are identified as "Mile Square Transportation" and the drivers are required to wear jackets, again identifying the Employer, not the particular depot. The drivers must undertake the same training and pass the same hiring prerequisites. Interchange between the drivers appears somewhat seasonal but regular and the geographic proximity of the depots facilitates the employee interchange to accommodate changes in scheduled runs on short notice. The mechanics have contact with the drivers from various depots and sometimes between the school districts. The master seniority list is used for the employees to bid on routes based on their time with the company, not their tenure at a particular depot.

The record demonstrates that the historical, larger unit is still an appropriate unit. No variance in the management structure or change in the daily operations of the Employer would lead to the conclusion that the past bargaining history no longer plays a significant role. As the Board stated in *Gibbs & Cox, Inc.*, 280 NLRB 953, 954 (1986), factors supporting a shared community of interest at a single location are of lesser cogency where a history of meaningful bargaining has developed. In such circumstances, the Board strives to foster the established bargaining relationships. The negotiation of prior bargaining agreements on behalf of the multilocation unit and the application of its terms and conditions of employment to all of the depots bears significantly on the issue presented in the instant case as they highlight the extent to which bargaining on a multilocation basis has been stabilized by agreement. *Id.* at 955.

Accordingly, based on the foregoing analysis, Intervenor Local 100 has rebutted the single-facility presumption by establishing an overwhelming community of interest among the multilocation unit, as evidenced by centralized control of labor relations, integration of operations and prior bargaining history.

Having found that the multilocation lower Westchester unit is appropriate, I do not reach the alternative argument raised by Intervenor Local 100 regarding the recognition bar. Notably, if the petitioned-for, single facility unit were found to be appropriate, the petition would be dismissed because an employer's voluntary recognition of a union bars the processing of a subsequent petition unless the petitioner demonstrates that it had a 30-percent showing of interest at the time of recognition.

UNIT¹¹

Included: All full-time and regular part-time drivers, monitors, mechanics, cleaners and maintenance workers employed by the Employer at its Yonkers, New Rochelle and Mount Vernon facilities in lower Westchester, New York.

¹¹ Petitioner indicated that it would proceed to an election in any unit found appropriate. Thus, Petitioner, pursuant to Section 11031.2 of the Board's case handling manual and 102.114(g) of the Board's Rules and Regulations, shall be given 14 days to submit an additional showing of interest in the larger unit found appropriate herein. In the event Petitioner is unable to submit a sufficient showing of interest in the appropriate unit, this petition will be dismissed.

Excluded: All other employees, and all guards, professional employees and supervisors within the meaning of the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time¹² and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and regulations.¹³ Eligible to vote are those in the unit who were employed for an average of four hours per week during the calendar quarter immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹⁴ Those eligible shall vote on whether or not they desire to be

¹² Pursuant to Section 101.21 of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

¹³ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules. requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

¹⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, conditioned upon the submission of a sufficient showing of interest within 14 days from the date hereof, as provided in footnote 10, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **July 26, 2007, or seven days from the date that the Regional office determines that an adequate showing of interest has been submitted.** No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper

represented for collective bargaining purposes by International Brotherhood of Trade Unions, Local 713, Local 100, Transport Workers Union of America, AFL-CIO, International Brotherhood of Teamsters, Local 456, or none of these unions.¹⁵

Dated at New York, New York
July 12, 2007

/s/ _____
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

objections are filed. In the event the Petitioner notifies me that it does not wish to proceed to an election in the unit found appropriate, the election eligibility list will not be provided to Petitioner.

¹⁵ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **July 26, 2007**. The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with this Supplemental Decision for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.